

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2013

Public Authority: The Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested copies of two particular 'Notice of Immigration' decisions for two applicants who had applied via the Home Office's 'Tier 4 (General) Student' system for immigration. The Home Office refused to disclose the requested information on the basis of section 40(2) of FOIA. The Commissioner is satisfied that section 40(2) has been relied on correctly but by failing to issue its refusal notice within 20 working days of the request Home Office breached section 17(1) of FOIA.

Background

2. This request focuses on the Home Office's 'Tier 4 (General) Student' points based-system for immigration.
3. Under this system applicants have to provide evidence of their confirmation of studies (CAS) as part of their application to the Home Office in addition to other supporting evidence.
4. The CAS is provided to an applicant by the sponsoring institution in the UK (e.g. a university). Each CAS has a unique reference number and contains information about the course of study for which it has been issued and the student's personal details. The sponsor has to include particular information on the CAS.
5. Once an application has been considered under the Tier 4 (General) Student system, applicants will be issued with a 'Notice of Immigration Decision' or GV51 which explains the basis of the decision. The GV51 is not provided to the sponsor.

6. An application may be refused for reasons that are not related to the place of study and it is at the applicant's discretion as to whether they inform their sponsoring institution of the reason(s) why they have been refused entry.

7. There is no requirement placed on sponsors to report applicants who have been refused entry clearance to the UK; rather a sponsor must only report when a student they were expecting fails to show for enrolment.

8. The Home Office's guidance on sponsor's duties in this regard states:

'554. You must tell us if you have given a CAS to a student but they do not enrol on their course within the enrolment period. You must report this no later than 10 working days after the enrolment period has ended. You must include any reason they give, for example:

- *they missed their flight;*
- *they decided not to come to the UK;*
- *they delayed their enrolment;*
- *they are doing a course with a different sponsor; or*
- *we have refused them permission to come to, or stay in, the UK.'*¹

9. In the particular circumstances of this case the complainant is seeking the GV51 in relation to two particular applicants to whom his educational institution had previously issued CAS numbers.

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<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/guidancefrom31mar09/sponsor-guidance-t4.pdf?view=Binary>

Request and response

10. On 22 January 2013 the complainant wrote to the Home Office and requested information in the following terms:

'Sponsor License Number: [redacted]

Dear Freedom of Information Act policy team,

I wish to make a request for information; specifically for copies of some GV51 (LRA) PBS T4 (General) - Notice of Immigration Decisions issued by your overseas posts.

I have been directed to your team to ascertain the procedure necessary to make such a request and any related fee that may be charged for this service.'

11. The Home Office responded on 22 April 2013 and explained that Notice of Immigration decisions by overseas posts contain personal details of applicants and it is the Home Office's policy not to disclose these decisions to third parties because to do so would breach the Data Protection Act (DPA). The Home Office therefore refused to comply with the request on the basis of section 40(2) of FOIA.
12. The complainant contacted the Home Office on the same day in order to ask it to conduct an internal review. He noted that personal data could be 'anonymised' by removing personal information in a document. He suggested that he could provide 'CAS' numbers that identify the cases he was actually seeking information about. Alternatively, he suggested that he could provide the dates of birth for individuals he was interested in.
13. The Home Office responded on 16 May 2013 and confirmed that it remained of the view that given the nature of the information requested section 40(2) of FOIA had been applied correctly.

Scope of the case

14. The complainant originally contacted the Commissioner on 9 April 2013 in order to complain about the Home Office's failure to respond to his request within 20 working days.
15. The complainant contacted the Commissioner again on 17 May 2013 in order to complain about the Home Office's reliance on section 40(2) of FOIA.

16. The Commissioner asked the complainant to clarify exactly which GV51 decision notices he actually wanted to be provided with. He explained to the Commissioner that he wanted to be provided with the notices in relation to the applications made with two specific CAS numbers, details of which he provided to the Commissioner.
17. The focus of the Commissioner's investigation has therefore been to determine whether these two GV51 decision notices are exempt from disclosure under section 40(2) of FOIA.

Reasons for decision

18. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the DPA. The Home Office argued that disclosure of the requested information would be unfair and thus breach the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

19. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA as:

'...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

20. The Commissioner appreciates that in his request for an internal review the complainant argued that the information he requested could be disclosed in an anonymised form by removing personal information from the documents.

21. The Commissioner's test of whether the information is truly anonymised is whether a (or any) member of the public could, on the balance of probabilities, identify individuals by cross-referencing the 'anonymised' data with information or knowledge already available to the public.
22. Whether this 'cross-referencing' is possible is a question of fact based on the circumstances of the specific case. If identification is possible the information is still personal data and the data protection principles do need to be considered when deciding whether disclosure is appropriate. However, where the anonymised data cannot be linked to an individual using the additional available information then the information will, in the Commissioner's opinion, have been truly anonymised and can be considered for disclosure without any reference to the DPA principles.
23. Clearly, if the two requested GV51 forms were disclosed, even with the applicants' names redacted, the complainant would still be able to identify the individuals in question by using the CAS numbers he had used to specify which decisions notices he wanted to be provided with. This is because, as explained in the Background section above, the sponsor organisation provides each applicant with their CAS number. Although the wider public could not use the CAS numbers to identify the two individuals in question, as noted above the test as to whether information is anonymised is whether *any member* of the public could identify the individuals in question. As the complainant could identify the individuals from the GV51 even if their names were removed from the documents, then the Commissioner is satisfied that the requested information is personal data.
24. Having found the withheld information constitutes personal data, the Commissioner must therefore consider whether disclosure of this information would breach the first data protection principle and thus be exempt from disclosure on the basis of section 40(2).
25. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;

- the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
 - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
26. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
27. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
28. The Home Office explained that its general policy is not to disclose, to a third party, personal information about another individual. In the particular circumstances of this case it explained that applicants had no expectation that a copy of the GV51 decision notice issued to them would be disclosed to their sponsor (or indeed the wider world under FOIA). Furthermore, the Home Office argued that there was no need for a sponsor to have a copy of the GV51 decision notice in order to fulfil their sponsorship role.
29. The complainant argued that his request as third party was a legitimate one. He explained that he believed the name of his institution is mentioned in the requested documents and may contain information that is potentially defamatory. Furthermore, the complainant argued

that his institution was bound to report the outcome of each application as part of its sponsorship reporting duty. Therefore it was fair and reasonable for it to obtain a copy of the GV51 to validate each refusal to enable it to make the necessary report as required by Tier 4 sponsors.

30. With regard to the reasonable expectations of the applicants whose GV51 decisions notices have been requested, the Commissioner is satisfied that they would have no expectation that such information would be disclosed even to their sponsoring institution let alone to the world at large under FOIA, given the processes under which immigration applications of this type are handled. Although the Home Office has not commented specifically on the consequences of disclosure, having reviewed the content of the requested information the Commissioner is satisfied that disclosure of this information would infringe the privacy of the two individuals as it would reveal whether or not they had been successful in their application of immigration to the UK under this particular route, and if not, the reasons why their application had been refused.
31. In reaching these findings, the Commissioner believes that it is important to note that applicants are not under any obligation to share the reasons for why they have been refused entry with their sponsoring institution. Therefore, the Commissioner is satisfied that disclosure of the requested information in the format suggested by the complainant, i.e. a format that in reality would only allow the complainant's institution to identify the applicants in question, would still in the Commissioner's opinion be against the expectations of the individuals and moreover infringe their privacy.
32. In terms of the legitimate reasons for disclosure, although the Commissioner can understand why a sponsor may wish to know why a potential student to whom they had given a CAS number had been refused entry, based upon the Commissioner's understanding and interpretation of the guidance referenced above, sponsors do not need to know the reason(s) as to why an application has been refused in order to fulfil their sponsorship duties. In terms of the particular circumstances of the request, the Commissioner recognises that the complainant has particular concerns about possible content of the withheld information, i.e. the alleged defamatory comments about the complainant's institution. However, given that FOIA is concerned with disclosing information to the world at large, and the benefits associated with such disclosures, rather than any private interests, the Commissioner believes that this reason for disclosure only attracts limited weight.
33. In conclusion, the Commissioner is satisfied that disclosure of the two request GV51 decision notices, even in the redacted format suggested

by the complainant, would be unfair and thus breach the first data protection principle, primarily because of the reasonable expectations of the applicants. Moreover, the Commissioner does not believe that there are significant or compelling legitimate interests in disclosure of this information under FOIA sufficient to ensure that disclosure would still be fair. The requested information is therefore exempt from disclosure on the basis of section 40(2) of FOIA.

Section 17 – refusal notice

34. Section 17(1) of FOIA requires public authorities who want to refuse a request for information to provide applicants with a refusal notice citing the exemption(s) that it is seeking to rely on within 20 working days of the request. In the circumstances of this case although the request was submitted on 22 January 2013 the Home Office did not issue its refusal notice citing section 40(2) of FOIA until 22 April 2013. It therefore breached section 17(1) of FOIA.

Right of appeal

35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

36. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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